IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 3948 OF 2001 (MS)
OLD CMWP NO. 31626 OF 1994

State of U.P. through the Collector Dehradun.
……. Petitioner.

Versus

1. District Judge, Dehradun
2. Pawan Agarwal, S/o Sri Rameshwar Dayal,
   R/O 1, Darshani Gate, Dehradun.
3. Nazir Hussain S/O Alibaksh R/o Kanwali, Dehradun.
4. Roshan Ali S/o Ali Baksh R/o Kanwali, Dehradun.
5. Hem Raj S/o Srilal Khusi Ram
   R/o Agricultural goods Barnala (Pb). **…Respondents**.

Dated 20-03-2006

Hon'ble B.S.Verma, J.

By means of the present Writ Petition, the petitioner-State has challenged the judgment and order dated 14.11.1991 passed by the District Judge, Dehradun (respondent no. 1) in Urban Land Ceiling Appeal No. 90 of 1991, Sri Pawan Agarwal vs. state of U.P. another. By the impugned judgment and order ***(Annexure- 3 to the writ petition),*** respondent no. 1 allowed the appeal and set aside the order dated 7-9-1991 passed by the Competent Authority Dehradun.

Brief facts giving rise to the present writ petition are that the respondents no. 2 Pawan Agarwal purchased land admeasuring 0.0955 acre of plot no;, 1496 situate in village Kanwali, Pargana Centrl Doon, Dehradun through a registered sale deed dated 8-8-1984. Originally the land in question belonged to Nazar Hussain and Roshan Ali (Respondent nos. 3 and 4) being agricultural land. Before enforcement of the Master Plan, respondent nos. 3 and 4 sold the land showing the same as residential land. It reveals from the record that initially in pursuance of the provisions of Section 6(1) of the Urban Land (Ceiling and Regulation) Act ***(in short the Act),*** the land holders

filed the statement of properties held by them and proceedings were drawn proposing to acquire 15539.41 sq.mt. land as surplus land. No objection was filed against the draft statement under Section 8(3) of the Act. Ultimately, the learned Competent Authority after perusing the material on record confirmed the notice under Section 8(3) of the Act. Aggrieved by the said order, Pawan Agarwal (contesting respondent no. 2) preferred appeal before the District Judge. Before the District Judge, it was not disputed by the State that the transaction of disputed land took place prior to the enforcement both the Master Plan. The learned District Judge after hearing both the parties passed the impugned judgment and order dated 14-11-1991 as mentioned above. It has been held by the District Judge that the portion of the land which was sold by the landholders prior to the enforcement of the Master Plan could not be taken into account for determining the ceiling limit. Accordingly the order of the Competent Authority was set aside. Aggrieved by the impugned order, the State has come up before this Court in the Writ Petition.

I have heard Sri Nand Prasad, learned Standing Counsel for the State and perused the record.

The Act Urban Land (Ceiling and Regulation) Act, 1976 (Act No. 33 of 1976) was repealed by the Central Act No. 15 of 1999. The Legislature of State of U.P. has since adopted the provisions of the Urban Land (Ceiling and Regulation) Act 1999, by a resolution as required by Article 252(2) of the Constitution, which has come into force in Uttar Pradesh on 18-03-1999 and the same are also applicable in the State of Uttaranchal.

Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 provides as under:

> ***"4. Abatement of legal proceedings.- All proceedings relation to any order mad or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or other authority shall abate;***

Provided that this section shall not apply to the proceedings relation to Section11,12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the Competent authority.

As stated by the learned Standing Counsel, Sri Nand Prasad, appearing on behalf of the State, no declaration has been published under Section 10(3) of the principal Act, therefore, no question of vesting of the land in the state or taking over possession arises. The effect of the repealing Act on present case is that where for land in dispute, no declaration was published under section 10(3) of the Act, there is no question of vesting the land in the State or taking over possession of it. The present proceedings have to be abated and are hereby abated under section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

The facts of the case are squarely covered by the judgment of the Apex Court in the case of ***"Pt. Madam Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and others" (2000, AIR, SCW, 1882)***

In view of the above, the Writ Petition has become infructuous and is dismissed as infructuous. Ordered accordingly.

(B.S.Verma, J.)

RCP